IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 453 of 1987
with
First Appeals Nos.455/87, 457/87, 460/87, 461/87,
464/87, 465/87 and 466/87

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 : No

THE NEW INDIA ASSURANCE COMPANY LIMITED
Versus
JASHUBEN D/O THAKOREBHAI ZINABHAI

Appearance:
MR A.R. MEHTA for appellants
NOTICE SERVED for Respondent No. 1
MR SN SOPARKAR for Respondent No. 3

CORAM : MR.JUSTICE M.H.KADRI
Date of decision: 23/06/1999

COMMON ORAL JUDGMENT

1. Appellant, The New India Assurance Company Limited, by way of filing these eight appeals under Section 110-D of the Motor Vehicles Act, 1939, has challenged the common judgment and award dated September 22, 1986, rendered by the Motor Accidents Claims Tribunal (Main), at Surat, in M.A.C. Petitions Nos.81 to 85; 87 to 93; 163 to 166; 173, 178, 180, 191, 192, 233, 234, 235, 288 to 294; 513, 742, 743, 744, 745, 746, 747, 478, 750, 749 of 1984 (in all 43 petitions) filed by the claimants.

2. The accident in question occurred on December 14,1983 at about 8.15 a.m. near the canal at village Kavas in Surat District. Truck bearing No.GTT 6977 was involved in the accident. In the said truck, 42 labourers and one contractor were travelling at the relevant time. The said truck was driven by respondent No.2 whereas the said truck was owned by respondent No.3. It may be mentioned that the truck in question was insured with the appellant-insurance company. The driver of the truck lost control over the vehicle, as a result of which, the truck went off the road and turned turtle. Consequently, the labourers travelling in the offending truck at the relevant time sustained injuries. Most of the labourers were female folk. On account of the said accident, two lady labourers died on the spot - (1) Paliben and (2) Savitaben. Seven labourers sustained serious injuries and other labourers sustained injuries of varying gravity. The injured claimants-labourers and heirs of deceased Paliben and Savitaben filed M.A.C. petitions before the Motor Accident Claims Tribunal, Surat, claiming compensation from the appellant as well as respondents nos. 2 and 3.

3. The M.A.C. petitions were resisted by the driver and the owner of the truck bearing No.GTT 6977 and the Insurance Company, who is appellant before this Court. Opponents Nos. 1 and 2, i.e., driver and owner of the truck, admitted that the injured persons were travelling as labourers of opponent No.2 who was owner of the truck. It may be mentioned that one Kuwarjibhai Jivabhai who was travelling in the truck, was not labourer, but was a labourers' contractor and, therefore, the Insurance Company pleaded that they were not liable to pay compensation to said Kuwarjibhai Jivabhai. The appellant, by filing their written statement, contended that the liability of the Insurance Company is limited for payment of compensation to the extent of five labourers only. It was also contended by the Insurance Company that the driver of the truck was not holding valid driving licence and, therefore, the Insurance Company was not liable to pay compensation.

4. The Tribunal raised necessary issues in all the claim petitions and awarded compensation to the labourers who were traveling in the offending truck. This group of eight appeals are filed against eight M.A.C. Petitions, details of which are as under:

Sr. No.	F.A.No.	M.A.C.P No.	Amount awarded

1.	453/87	293/84	Rs.58,000/-
2.	455/87	173/84	Rs.29,600/-
3.	457/87	180/84	Rs.54,000/-
4.	460/87	289/84	Rs.20,550/-
5.	461/87	290/84	Rs.12,500/-
6.	464/87	294/84	Rs.46,000/-
7.	465/87	513/84	Rs.44,250/-
8.	46/87	759/84	Rs.37,100/-

As common questions of facts and law are involved in the present appeals, they are disposed of by this common judgment.

5. Learned advocate for the appellant, Mr.A.R. Mehta, vehemently submitted that the Insurance Company is not liable to pay compensation for more than five labourers. The contention of the learned advocate for the appellant is devoid of any merit in view of the judgment of the Division Bench of this Court in the case of National Insurance Company vs. Punabhai Zerabhai Koli and others, reported in 1985 G.L.H.786, wherein the Division Bench held as under:

"In view of the provisions of sub-rules 3, 4 and 5 of Rule 118 of the Bombay Motor Vehicles Rules, 1959, the appropriate authority may permit the owner of the goods vehicle to carry more than seven bonafide employees on certain conditions or occasions and on certain inescapable grounds of urgent nature in public interest. Therefore, it cannot be said that there is a total restriction on carrying of more than six or seven bonafide employees in the goods vehicle. By virtue of Clause I.M.T. 16 in the policy, the insurer is liable to indemnify the insured-the owner of the vehicle in respect of all the employees who have met with the accident and who suffered injuries. There is no reason to restrict the coverage of insurance to six bonafide employees only."

It is an admitted fact that the injured labourers were travelling in the offending truck which was owned by opponent No.2 and which was insured with the appellant. By virtue of Clause 16 of the insurance policy, the appellant is liable to indemnify the insured in respect of all the labourers who have met with the accident and who suffered injuries. In view of the judicial pronouncement in the case of Punabhai Zerabhai Koli (supra), in my opinion, there is no merit in the contention of the learned advocate for the appellant.

6. It is also contended by the learned advocate for the appellant that the persons travelling in the truck

were not labourers of the owner of the vehicle and were passengers in the truck and, therefore, they are not covered by the insurance policy, and the Insurance Company was not liable to pay compensation in respect of the persons who were travelling in the offending truck. The contention raised by the learned advocate for the appellant is devoid of any merit and deserves to be rejected. The Tribunal, on over all appreciation of evidence, came to the conclusion that 32 persons who were travelling in the truck, were labourers who were employed by the truck owner, i.e. respondent No.3. Even in the written statement filed by the original opponents Nos. 1 and 2, i.e. respondent Nos. 2 and 3, it was admitted that 32 persons who were travelling in the truck were labourers of the owner of the truck. Therefore, in my opinion, the persons who were travelling in the truck, who met with accident and sustained serious injuries cannot be called 'passengers'. The decision of the Apex Court in the case of Smt. Mallawwa vs. The Oriental Insurance Co. Ltd & Others, reported in JT 1998 (8) SC 217, on which reliance is placed by the learned advocate for the appellant, will not apply to the facts of the present case, as, in this case, admittedly, the persons who were travelling in the offending truck were labourers. The finding of the Tribunal that the driver of the offending truck was negligent in causing accident is quite just and proper. The compensation awarded on various heads to the claimants, in my opinion, is just, reasonable and adequate. No interference is called for as the compensation awarded is not on higher side or excessive. The direction of the Tribunal with regard to disbursement and withdrawal of the awarded amount does not call for any interference and, therefore, the same is not disturbed. There is no merit in any of the contentions raised by the learned advocate for the appellant and the appeals deserve to be dismissed.

7. As a result of foregoing reasons, all the appeals are dismissed with no order as to costs.

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(swamy)